IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/04/2004

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

CRL OP. NO. 3443 of 2004
and CRL OP. NOS. 3444 to 3446 OF 2004
and Crl.M.P.Nos., 811 to 814 of 2004

K.Selvam @ Selavaperunthagai .. Petitioner
in all Crl.O.Ps

-Vs-

State rep. by
Inspector of Police
J-5 Sastry Nagar Police Station
Chennai City. .. Respondent in
(Cr.No:136/03) Crl.OP.3443/04

State rep. by
Inspector of Police
J-6 Thiruvanmiyur Police Station
Chennai City.
(Cr.NO.138/03) & .. Respondent in
(Cr.No:451/03) Crl.OP.3444/04 &
Crl.OP.3446/04

State rep. by
Inspector of Police
R-4 Pondy Bazaar Police Station
Chennai City. .. Respondent in
(Cr.No:277/03) Crl.OP.3445/04

Criminal Original Petitions preferred praying this court to transfer the cases from the respective respondent Police Stations to the Central Bureau of Investigation, Special Crime Branch, Chennai for further investigation.

For Petitioners :: Mr.K.Chandru, Senior Counsel

For respondent :: Mr.I.Subramaniam, S.C.,
Public Prosecutor

:O R D E R

These Criminal Original Petitions have been filed to transfer the cases in Crime No:136/03 (J5, Sastri Nagar Police Station, Chennai), Crime Nos: 138 and 451 of 2003 (J6, Thiruvanmiyur Police Station, Chennai) and Crime No:277/03 (R-4, Pondy Bazaar Police Station, Chennai), to the Central Bureau of Investigation, Special Crime Branch, Chennai for further investigation.

2. According to the petitioner Selvam @ Selva Perunthagai, he has been implicated in the above four cases, foisted falsely by the police to cripple and paralyse his political career by a conspiracy hatched by the Chennai Police and also for the purpose of detaining him under Act 14 of 1982. According to the petitioner, various lacunas and loopholes would have made him to approach this court for quashing the FIRs of the four cases. But if the FIRs are quashed, the persons who are instrumental would escape from their liability. According to the petitioner he could very well prove his innocence and come out of the cases successfully after undergoing trial. But according to him, the persons who are instrumental of foisting false cases against the petitioner will go Scot free and escape from criminal liability. This is the reason the petitioner has filed these Criminal O.Ps with a prayer to transfer the investigation of all above four cases to CBI, Special Crime Branch, Chennai. The details of the four cases filed against the petitioner and the contention of the petitioner are as follows:-

(i) Crime No:451/03 of J.6, Thiruvanmiyur Police Station, Chennai (Crl.O.P.No:3446 of 2004) is for offences under Sections 294(b), 307, 5 06 (ii) IPC and Sec.3 of Explosive Subtances Act. According to the petitioner, on 30.4.2003 at about 11.30 p.m., he was returning from the Anna International Airport, Meenambakkam along with one Sakthivel @ Adalarasu in his car driven by his driver Palanivel, after seeing off Mr.Thirumavalavan, President of the party who flew to United States of America. The car was intercepted at the Halda Junction, Guindy by the Deputy Commissioner of Police, Adyar Ditrict, Chennai and whisked away along with his driver. The petitioner was taken to the Sastry Nagar Police Station, where he was illegally detained for the whole night. The guidelines laid down by the Supreme Court was flouted in so far as the petitioner was not informed of the grounds of arrest, he was denied any legal assistance etc.,

(ii) On 1.5.2003, at about 12 noon, he along with his driver Palanivel was produced before the IX Metropolitan Magistrate at his house where he came to know that a case in J.6,Thiruvanmiyur Police Station in Crime No.451 of 2003 has been registered by the Inspector of Police against him and the driver. The petitioner and Palanivel were remanded to judicial custody for 15 days under the sections mentioned earlier. The case was said to have been registered on 1.5.2003 at about 6.45 hours and the petitioner was shown arrested at 8.45 hours. This case was shown as the ground case in the grounds of detention when the petitioner was detained under Act 14 of 1982. Before arrest on 30.4.2003, the petitioner contacted his wife Smt.Umayal at about 11 .30 hours through his Cellular Phone No.31021858 and informed her that he will be back at home soon. After he was picked up by the police and kept under illegal detention, the petitioner's wife panicked by his non return was continuously calling the petitioner over his cellular phone. Since the

petitioner was prevented from talking over his cellular telephone and the phone was taken away by the police, these calls have been registered as "missed calls". A perusal of the "missed calls" would show that there were 12 calls from the petitioner's wife from Phone No.24468717, residential phone number of the petitioner, and his brother in law right from 01.35 am of 1.5.2003 to 6 .42 a.m., of the same day. This cellular phone had been seized by the Inspector of Polcie, J6, Thiruvanmiyur Police Station and deposited in the IX Metropolitan Magistrate Court, Saidapet, Chennai and the same was returned only on an application for return of property. From this, it will be clear that if the petitioner had not been illegally detained by the Deputy Commissioner of Police, Adyar District, right from 12 midnight of 30.4.2003, then he would have spoken to his wife to intimate his whereabouts. In an alleged confessions of the petitioner recorded by the Inspector of Police, it has been mentioned as if the petitioner after seeing off Mr.Thirumavalavan went to Tambaram straight from the Airport. If the petitioner really had gone to Tambaram he would have intimated this fact at least to his wife. The petitioner's wife Tmt.Umayal had intimated this fact as early as 6thmay, 2003 when she submitted a representation to the Commissioner of Police, Chennai City about the illegal detention of the petitioner and foisting of false case upon him.

(iii) The Same Inspector of Police also registered a case in Crime No:138 of 2003 on 5.2.2003 on the complaint of one Babu son of Rabesh. But the petitioner was not arrested till 1.5.2003. Actually, the petitioner was in Madurai on that date to attend the marriage of one Sakthivel, a party functionary and he returned to Chennai only on 6.2.2 003. While the first respondent who was the Sponsoring Authority for detaining the petitioner under Act 14 of 1982 had shown arrest of the petitioner in the above case, he has not cited the case in Crime No.136 of 2003 referred above as an adverse case in the grounds of detention. The first respondent had even cited a murder case that took place about seven years ago, as an adverse case, but had not chosen to cite the above case. It has now come to light that the alleged complainant is a stock witness of the police Station. In this case he is the complainant, whereas in the second case that was registered against the petitioner by J-5, Sastry Nagar Police Station in Cr. No.136/03, this complainant is the witness in the seizure mahazar for seizure of glass pieces, iron shrapnel, etc., from the alleged scene of crime. This case has been cleverly avoided by the 1st respondent and not shown as an averse case, because they realised the error that the defacto complainant in the first case is the mahazar witness in the second case. The grounds of detention has an index. A perusal of the index itself would have exposed the evil design of the first respondent at the earliest stage, had he cited this case as an adverse case, as the petitioner would have discovered the fact that the said Babu is the complainant in this case as well as a witness for the seizure mahazar in another case. The said defacto complainant Babu is a witness in J.5 Sastry Nagar Police Station Cr.No.5 of 2002 now pending trial before the Fast Track Court NO.5 in S.C.No.200/2003. He is also a witness in J.5 Sastry Nagar Police Station Cr.No.732 of 2001 now pending trial before the Fast Track Court No.4 in S.C.No.263 of 2 003.

(iv) The first respondent would now state that the defacto

complainant in J.6, Thiruvanmiyur Police Station Cr.No.138/03 had stated that the petitioner is not the person who assaulted him and hence the case has been closed as undetected. It is not known as to why the 1st respondent had not verified the identity of the petitioner before showing him arrest in this case. However, the defacto complainant has specifically stated in his complaint that the person who assaulted him had stated that he is Selvam @ Selvaperunthagai of Viduthalai Siruthaigal. In that case some one had impersonated the petitioner and had assaulted the defacto complainant. The police should add 416 IPC and further investigate the case, instead of referring it as Undetected. It would be clear that the 1st respondent has referred this case, since he realised the error that the defacto complainant is a witness in the second case, registered against the petitioner and wanted to bury this fact.

(v) If the defacto complainant himself had stated that the petitioner is not the person who assaulted him one another pertinent question arises as to how the petitioner in his confession statement could have confessed to the above offence. If the petitioner is not involved in the commission of the said offence, how that he had admitted to the same. This shows the falsity of the recording of the confession by the 1st respondent to suit his convenience and comfort. The 1 st respondent had gone to the extent of recording the confession of one Palanivel, who was arrested along with the petitioner, in which he also admits that the petitioner assaulted the defacto complainant.

(vi) Crime No:136 of 2003 in J.5 Sastry Nagar Police Station is for an offence punishable under Section 307 IPC and sec.3 of the Explosive Substances Act. This case was registered on 15.2.2003 on the ground that the petitioner had assaulted a Sub Inspector of Police and also used explosive substances. It is a case of attack on police as alleged in the case. The petitioner was not arrested till 1.5.2003. The witness for the alleged seizure of the glass pieces, iron shrapnel, news papers etc., is one Babu, who is a stock witness of the said police station.

(vii) Crime No: 277 of 2003 of R.4 Pondy Bazaar Police Station has been registered on 15.3.2003 on the complaint of one Manikandan, a bunk shop owner. The charge against the petitioner is that he demanded a sum of Rs.500/= and damaged the property of the complainant after criminally intimidating him. The petitioner is an employee of the Reserve Bank of India, Chennai and is drawing aroundRs.15,000/= as salary. The petitioner is also an income tax assessee for the past several years and is possessing movable and immovable properties worth several lakhs and he is paying sizable amount as income-tax every year. It would be unbelievable that he had demanded a paltry sum of Rs.50 0/= from a bunk owner, that too going to a place 5 kilometers away from his residence.

(viii) Even assuming for a moment that the petitioner had committed the above four crimes it is not known as to why the petitioner was not arrested even though he was very much available in the city and had not absconded.

(ix) On 10.2.2003, 24.2.2003, 10.3.203, 7.4.2003 and 28.4.2003 i.e., after the registration of the first case in J.6, Thiruvanmiyur police Station Crime NO.138 of 2003 on 5.2.2003, the petitioner had been attending the Principal Sessions Court, Chennai to face the trial in S.C.No.28 of 2003. The Inspector of police, J.6, Thiruvanmiyur Police Station or the Inspector of police R.4, Pondy Bazaar Police Station could have secured him before the last case was registered i.e., on 1.5.2003. It is pertinent to note that the Sub Inspector of police, J.5 Sastri Nagar Police Station or the Inspector of Police J.5 Sastri Nagar Police Station could have secured him before the last case was registered i.e., on 1.5.2003. The Police would have come to know that the said murder case is pending trial in the Sessions Court, but it is not known as to why the second respondent had not nabbed the petitioner while he was attending the court on the above said dates. This itself would prove that the respondents were registering case after case behind the back of the petitioner and at last after illegally detaining him on 30.4.2003 registered the last and fourth case and detained him under Act 14 of 1982.

(x) In Cr.No:451 of 2003 (Crl.O.P.No:3446/04) which has been registered under Section 307 IPC and Sec.3 of the Explosive Substances Act, on the complaint of one Nandakumar, the alleged defacto complainant in the case, had come forward to voluntarily give a statement before the learned VI Metropolitan Magistrate, Egmore, Chennai who had recorded the same under Section 164 Cr.P.C. On 6.6.2003, in which he had stated that the Police have forced him to give a false complaint against the petitioner with false representation and that he had not sustained any injuries as alleged. The said defacto complainant at a later point of time sent a letter to the Director of Medical Services, Chennai to the effect that he had not sustained any injury, since such an incident never took place and that he was not examined by any doctor. The first informant had even gone to the extent of offering himself to undergo any medical examination to show that there are no wounds/scars at the places mentioned in the Accident Register. This would itself prove that the whole case is fo isted against the petitioner in furtherance to the intention of detaining him after foisting 2 or 3 cases to make him qualify for detention under Act 14 of 1982. According to the petitioner the Chennai City Police have gone to the extent of obtaining false complaints from strangers against the petitioner and by using influence and pressure had also fabricated Accident Register as if the said complainant had sustained injuries. It would be of interest to note that the identification mark of the alleged victim had not been noted by the Doctor in the Accident Register which would itself prove that the alleged victim had never been examined by any doctor. The Police had even gone to the extent of enacting a drama as if some country made bombs were recovered from the scene of crime and had sent it for diffusion and chemical analysis.

(xi) After registering all the four cases in a phased manner, the Police accomplished its intention of detaining the petitioner under Act 14 of 1982 by a detention order dated 12.5.2003. However, the State Advisory Board had revoked the same by its order dated 27.5.2003 accepting the contentions raised by the petitioner.

(xii) Thiru Sakthivel @ Adalarasu who was illegally detained along

with the petitioner and had been released later had submitted a memorandum to the State Human Rights Commission, Chennai.

3. P.Ravisekaran, Inspector of Police, (L & O) J.5, Shastry Nagar Police Station alone filed a counter in Crl.O.P.No: 3443 of 2004 and no counter has been filed in the other three Crl.O.Ps. In the said counter the Inspector of Police stated as follows:-
(i) Crime No.136 of 2003 of J.5 Shastry Nagar Police Station was registered under Section 353 and 307 IPC and Sec.3 of the Explosive Substances Act, 1908, on the basis of the complaint given by K. Jayaprakash, S.I of Police of the same Police Station. In the complaint it is alleged that the complainant and one Head Constable NO.8075by name K.Samianthan of the same Police Station were on duty on 15.2.2003 evening at the junction of IV Main road, 6th Avenue, Besanth Nagar, in front of the Police booth. At that time, a vehicle (scorpion) bearing registration number TN-07 R.4361 was plying fast from Besant Nagar 6 th Avenue, Annai Velankanni Church towards north and it stopped before the speed breaker on the Eliots Beach opposite to Global Trust Bank (ATM) at about 21.05 hrs. On seeing this, the aforesaid Sub Inspector and the Head Constable went near the vehicle and asked the person in the vehicle as to why he was driving in such a rash manner. The person who was sitting near the driver was Selvaperunthagai @ Selvam, the petitioner herein, who was involved in Auditor murder case, scolded the Police officers in a filthy language and threatened them saying that he would put an end to if he switched on the computer. When the Sub Inspector of Police and the Head Constable tried to bring out the driver who drove the said vehicle the said said Selvaperunthagai, the petitioner herein took out a ball shaped material from his bag and threw it towards the Sub Inspector of Police. ON seeing this, the Sub Inspector of Police just bent down and the ball shaped material fell on the ground and exploded creating a cloud of smoke. Taking advantage of this cloud of smoke, Selvaperunthagai escaped from the scene and in spite of chase by the said Sub Inspector the said Selvaperunthagai disappeared. After giving message to control room and after instructing the Head Constable to be in the occurrence place, the Sub Inspector of Police came to Shastry Nagar Police station and gave a complaint before the Inspector of Police, narrating the incident.

(ii) On the basis of the above complaint a case in J.5 Shastry Ngar P.S. Cr.No.136 of 2003 under Section 353 and 307 IPC and Sec.3 of the Explosive Substances Act, 1908 was registered against the petitioner herein. Investigation was taken up by the then Inspector of Police, Thiru A.R.Mohan. During the course of investigation he examined seven witnesses. On the same day (15.2.2003), the Inspector of Police recovered the exploded materials viz., glass pieces, grey colour torned cloth, newspapers pieces, iron pieces, small iron balls, jute pieces, sample sand etc., under mahazar at 23.15 hours attested by witnesses Babu and Saravan. The recovered materials were sent for chemical analysis through the learned Magistrate. The Assistant Chemical Examiner and Assistant Director, Explosive Forensic Sciences Department, Chennai after examining the above materials has detected sulphur, carbon, aluminum, potassium, Chlorate, Sulphate and Thio-sulphate. The constituents detected in the above items are the explosion residues of country bomb (improvised explosive device) which is a low explosive. He further opined

that the country bomb when exploded, may endanger human life. The then Inspector of Police completed the investigation and requested the District Collector for according sanction under the Explosive Substances Act and in the meantime he was transferred.

(iii) He joined as Inspector of Police, Shastry Nagar Police Station on 21.6.2003. The District Collector, Chennai has accorded sanction for prosecution by his proceedings in A5/63811/203, dated 5.12.2003 and the same was received on 29.12.2003.The case was charge sheeted on 2.2.2004. The Deputy Director of Prosecution approved the charge sheet on 4.2.2004 and the City Public Prosecutor approved the charge sheet on 5.2.2004 and on the same day the final report was subnmitted before the learned IX Metropolitan Magistrate, Saidapet, Chennai and it was taken on file as PRC No.19/2004. Under these circumstances, the question of transferring the case to other agency does not arise.

(iv) The petitioner has raised flimsy, frivolous and vexatious allegations in para 9 of the Crl.O.P.3443/04. Since the petitioner/ accused absconded immediately after the occurrence, the Police was not able to apprehend him. But formal arrest was effected by the then Inspector of Police, on 2.5.2003 at 16.30 hours at Central Prison, Chennai while the petitioner was in remand in connection with Thiruvanmiyur Police Station Cr.No.451/2003 under Section 294(b) 307, 506 (ii) IPC and Section 3 of the

Explosive Substances Act, 1908. Further, it is the discretion of the investigating officer to report the incident to the newspaper on the basis of the veracity o the case. The above case is a true case.

4. On 5.2.2004, these Criminal Original Petitions were heard and a common order was passed in the Crl.M.P.Nos.811 to 814 of 2004 by issuing notice to respondents returnable by 17.2.2004 and if the charge sheet is not filed so far the respondents were directed not to file the charge sheet. The case was periodically adjourned from 17.2.2004 to various dates viz., 24.2.2004, 1.3.2004, 3.3.2004, 10.3.2004 and 11.3.2004, on which date an affidavit was filed wherein it was mentioned that charge sheet was filed on 5.2.2004 and the IX Metropolitan Magistrate has taken the same on file as PRC.No.19 of 2004. This affidavit is alleged to have been sworn to on 16.2.2004, but was produced only on 11.3.2004 and not on the earlier dates as mentioned earlier. Having suspected some foul-play, this court passed an order directing the Registry to call for the records in PRC.No.19/2004 and also the registers showing the receipt of charge sheets maintained in that court. The Charge Sheet in Crime No.136 of 2003 for an offences Under Sections 353, 307 IPC and Section 3 of Explosive Substances Act of J.5, Shastry Nagar Police Station, and the PRC Register, Local Tabal Register AFIR Register and main PRC Registers were sent for from the IX Metropolitan Magistrate Court, Saidapet, Chennai.

5. A perusal of the documents would reveal the following facts. The charge sheet in Cr.No.136 of 2003 is purported to have been filed on 5.2.2004. In the List of Documents, at page 3, the concerned Clerk has written in red

ink "memo of evidence not filed" and it is initialed by the said Clerk. But a perusal of the charge sheet would show that memo of evidence has been actually filed along with final report and the fact of filing memo of evidence is mentioned in para (,) of the final report, wherein it is mentioned that statement of witnesses recorded under Section 161(3) Cr.P.C., list of documents, and list of witnesses is enclosed. Therefore, the recording of "memo of evidence not filed" in red ink by a clerk on 5.2.2004 is not factually correct. Further, the final report along with list of documents, memo of evidence from page 3 to 13 contains the court seal dated 9.2.2004 with initials of the Magistrate. It is pertinent to note that the date seal of the court dated 5.2.2004 is not found anywhere in this final report, except the four words "memo of evidence not filed" and initialed by a clerk on 5.2.2004. In the first page i.e., docket sheet the same clerk who made endorsement on 5.2.2004 has made another endorsement "memo of evidence not filed", checked and signed on 9.2.2004 and the learned Metropolitan Magistrate has passed an order "file" and initialed on 9.2.2004. It is pertinent to note that the FIR, Plan, Mahazar, Form-95, Remand requisition, Remand Extension Reports, Requisition to send Properties to forensic laboratory and all such documents bear the same date seal of Court on the same day when documents were received or sent. But strangely, the final report does not bear the date seal of 5.2.2004, the date of alleged filing of charge sheet, and on the other hand contain the seal dated 9.2.2004, even though 5 .2.2004 and 6.2.2004 are working days.

6. Already a Manual of Notification has been issued by this Court viz., for "GUIDANCE OF MAGISTRATES IN TAMIL NADU" in the year 1993 itself. At page 6 of the said Guidance, under the Heading, "INDEXING RECORDS IN PENDING CASES" it is mentioned as follows:-
"From the time the FIR is received in a Magistrate's court, papers and documents, etc., will be sent from time to time to the court by the investigating officer. On receipt of these papers, the Magistrate should ensure that they are promptly affixed with the date seal of his court. It is essential that the magistrate receiving the FIR in grave crimes and in cases of death, makes a note on the FIR under his initials, the time and the date of its receipt. This should be done notwithstanding that the FIR is received by him beyond court hours and even on a holiday. This applies also to inquest reports and the statement of witness accompanying the inquest report.(See High Court's Circular ROC No.2272A/74-F1, dated 24th June 1974)"

7. When there are specific instructions to affix the date seal of the court on each and every papers received by the court and when date seals are affixed in all other papers like remand extension request, letter to Police laboratory, plan, seizure mahazar, etc., the date seal of the court of 5.2.2004 is missing in the final report and the date seal affixed is only on 9.2.2004.

8. Another important aspect is that even on 9.2.2004, when the Clerk has made an endorsement "memo of evidence not filed", "checked", the Metropolitan Magistrate has passed an order to take the case on file and allotted PRC.No.19/2004. As already mentioned, Actually list of witnesses and

memo of evidence has been enclosed along with the final report. But, with a view to make an endorsement as if the final report was received by the court on 5.2.2004, the Clerk of the Court has made an endorsement "memo of evidence not filed" on 5.2.2004. The Local Tabal Register maintained in the said court from 2.1.2004 does not contain any entry that a tabal cover containing the charge sheet was received on 5.2.2004. The PRC Register maintained in the said court, which is blank in the first three pages, has been written from 8.1.2004 on one and the same day by the same person as admitted by one Suganthi, Junior Assistant in her explanation dated 23.3.2004 wherein she has stated that she received the PRC Register and made all the entries in one day. In the PRC Register also the entry for receipt of charge sheet is only mentioned as 9.2.2004. In the main PRC Register maintained in the 4th Metropolitan Magistrate Court for all the Metropolitan Magistrate Courts at Saidapet, the charge sheet is said to have been received only on 9.2.2004. In the AFIR Register maintained in the said Court from 1.1.2003 under Serial No.193/2004, entry has been made only on 9.2.2004. In the AFIR register maintained in the IX Metropolitan Magistrate court, there is an entry for receipt of FIR in Crime Nos. 1379/2002, 6/2003, 1378/2003, 22/2003, 27/203, 31 /2003, 61/2003, 76/2003, 88/2003, 90/2003, 118/2003, 108/2003, 109/20 03, 23/2003, 136/2003 upto Serial No.193/2003. I am at a loss to understand as to what happened to the FIRs of the other crime numbers registered in the said Police Station upto Crime No.135 of 2003, whether such FIRs have been actually registered and sent to court or whether crime numbers are kept blank for registering false cases on future dates. However, from the records received from the IX Metropolitan Magistrate Court, it is clear that the final report dated 5.2.2004 could not have been filed on 5.2.2004, but the Inspector of Police, in collusion with the court staff and the concerned Magistrate connived to get an endorsement from the clerk of the court as if the final report was filed on 5.2.2004 itself, the date on which this court passed an order "not to file charge sheet". The Sanction order for prosecution by the Collector of Chennai dated 5.12.2003 has been received by the first respondent even as early as on 29.12.2003. Thereafter no investigation was made by the first respondent. About 34 days later, he has prepared the charge sheet after directions by this court " not to file the charge sheet".

9. An explanation has been called for from the Metropolitan Magistrate and concerned court staff and the Registrar (Judicial), High Court, Madras will take separate action against the erring court staff and the Judicial Officer for the lapses on their part. Further, the Registrar General is directed to issue suitable instructions to all the Magistrates to maintain the Registers properly to show receipt of all the papers and documents etc., promptly affix the date seal of the concerned court and the date of receipt of such papers and documents. Failure to maintain such registers or affixing the court date seal will facilitate committing fraud on the court by smuggling papers and documents into court with endorsement of ante-date by the concerned staff of the court which will result in great injustice to the parties concerned.

10. The Learned counsel for the petitioners would contend that on the prima facie lacunas appearing in the prosecution cases, the petitioner can get acquittal after trial or quash the proceedings. But the conspiracy of the

City Police to foist false cases should be exposed to prevent abuse of law and powers and for that purpose the investigation in all these cases should be transferred to Central Bureau of Investigation. The various contentions

raised by the petitioner in these four cases prima facie made out a case to show that the four cases filed against the petitioner are in all probability, false cases, which require interference by this court.

11. The learned Public Prosecutor would contend that if the court wants the charge may be quashed, but oppose the transfer of cases for investigation by CBI on the ground that consent of State Government is required and also Section 6 of the Delhi Police Establishment Act, 1946, is a bar for the Court to order CBI I nvestigation.

12. In AIR 1988 SC 1323, (Kashmeri Devi V.Delhi Administration), the Hon'ble Supreme Court observed as follows:-
"This is an unfortunate case which tends to shake the credibility of Police investigation and undermines the faith of common man in Delhi Police which is supposed to protect life and liberty of citizens and maintain law and order. There has been serious allegations of murder by torture against the Police and further about the haphazard manner in which the investigation against the accused Police officers was investigated with a view to shield the guilty members of the Delhi Police."
"The appellant Kashmeri Devi approached the High Court by means of a writ petition under Art.226 of the Constitution for transferring the investigation of the case from the Crime Branchy of the Delhi Police to Central Bureau of Investigation. Division Bench of the High Court dismissed the Writ Petition by its order dated 26th September, 1986. Thereupon, the appellant approached this court by means of Special Leave Petition."

"We are in full agreement with the observations made by the learned Sessions Judge. As alrady noted during the pendency of the writ petition before the High Court and special leave petition before this Court the case was further converted from 304, IPC to 323/34, IPC. Prima facie the Police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority so that truth may be known."

"Since according to the respondents charge sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 1 73(3) Cr.P.C., to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law."

13. In 1992 (1) Crimes page 2 (Gudalure M.J.Cherian & ors Vs. Union of India & others), it has been held as follows:-

"It is not necessary for us to go into various facts and circumstances mentioned by the petitioners in the writ petition in support of their apprehensions that the investigation in the case by the Police was not fair and the victims are not likely to get justice by the authorities in the State of Uttar Pradesh. Four accused persons have been arrested in connection with the crime and the trial against them is likely to commence. The investigation having been completed by the Police and charge sheet submitted to the court, it is not for this court, ordinarily to reopen the investigation specially by entrusting the same to a specialised agency like CBI. We are also conscious that of late the demand for CBI investigation even in Police cases is on the increase. Nevertheless in a given situation to do justice between the parties and ti instill confidence in the public mind it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency."

"It is obvious from the affidavit of the Senior Superintendent, Police that the Nuns who are victims of the tragedy are not coming forward to identify the culprits in an identification parade to be held by the Magistrate. The petitioners on the other hand, have alleged that the four persons who have been set up as accused by the Police are not the real culprits and the police is asking the Sisters to accept the four arrested persons as culprits. In the ace of these averments and keeping in view the facts and circumstances of this case, we are of the view that ends of justice would be met if we direct the CBI to hold further investigation in respect of the offences committed between the night of July 12 and 13, 1990 as per the FIR lodged at Police Station, Gajraula."

14. In 1993 SC 356 (Maniyeri Madhavan Vs. Inspector of Police, Cannanore), Their Lordships of the Supreme Court held thus:-
"We are afraid, in this case the concerned officers of the State seem to manifest a disturbing degree of indifference. We take serious note of these lapses. Apart from considering as to which agency should now investigate this serious offence alleged against the State Police by a journalist, we would also like the State Government to explain why Mr.Raman who was in the midst of the investigation, was relieved and sent on deputation without the orders of this Court. In the meanwhile, the principal accused, the Superintendent of Police, has been elevated as a Deputy Inspector General of Police. Mr.Raman himself will have to explain as to why he did not complete the investigation in time, allowed time to lapse--and according to the petitioner, of allowing evidence to be lost with ulterior motives--and abandon the supervision of the investigation. These lapses in the investigation seem to lend credence to the grievance of the petitioner that Mr.Raman himself being a State Police Officer has not been able to distance himself from the interests of these accused of highhandedness against the petitioner. The Home Secretary will explain why he did not obey the orders of this court dated 3.9.1992 which expressly directed him to file an affidavit."

"We direct the Home Secretary, State of Kerala, Mr.Raman, The then Deputy Inspector general of Police (now working as Vigilance Officer of the Hotel Corporation of India) and the Chief Secretary representing the State, to show cause why action should not be taken against them for the lapses and

omissions in obeying the orders of this court. The Home Secretary as also Mr.Raman will appear personally before this Court while the Chief Secretary may be represented by his counsel. Notices in the appropriate form shall issue to them for proceedings of contempt of court."

"In the meanwhile, the interests of the petitioner have suffered. His travails in pursuit of an honest investigation of his serious grievance against the Police Officers of the State have not ended. He has been running from pillar to post to have his serious grievance that the Superintendent of Police virtually destroyed his Press investigated. We think the leas that we should do to him immediately is to compensate him in terms of costs for his being compelled to approach the court repetitively for relief. We direct the State of Kerala to pay to the petitioner a sum of Rs.10,000/= towards costs, now tentatively assessed, in addition to whatever damages that may be determined finally."

"Since it appears appropriate that the conduct and progress of the investigation of the case is such as not to inspire confidence, we recall the operative part of our order dated 22.12.1989 and direct the CBI to investigate the complaint of the petitioner, complete the investigation and make a report to this court within four months from today. All the records of the investigation including the representation filed by the petitioner before Mr.Raman shall be transferred by the State to the CBI promptly for further action."

15. In AIR 1994 SC 38 (R.S.Sodhi V. State of Uttar Pradesh), it has been held thus:-

"We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the socalled encounters. Whether the loss of lives was on account of a genuine on a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local Police personnel it would be desirable to entrust the investigation to an independent agency like the CBI so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would led the final outcome of the investigation credibility. However, faithfully the local Police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice entrust the investigation to the Central Bureau of Investigation forthwith and we so hope that it would complete the investigation at an early date so that those involved in the occurrences one way or the other may be brought to book. We direct accordingly."

16. In 1994 SCC (Cri) 1643, (Khedat Mazdoor Chetna Sangath Vs. State

of M.P. and others), the Supreme Court observed thus:-

"If dignity or honour vanishes, what remains of life?. In these circumstances, to uphold human values and to protect the rights guaranteed under the Constitution, we hereby direct the CBI to investigate and register cases and prosecute of the officers however, high or low in the hierarchy of administration for these serious lapses."

17. From the decisions cited above, it is clear that in cases where the credibility of Police investigation is shaken and undermines the faith of common man and Police acted in a partisan manner, in the interest of justice, it is necessary to get fresh investigation made through an independent authority so that truth may be known. In a given situation of the facts of this case, to do justice between the parties and to instill confidence in the public mind, it has become necessary to request the Central Bureau of Investigation to make further investigation in the above four cases.

18. In most of the cases where Sponsoring Authorities send reports to the Detaining Authorities, under the Act 14 of 1982, very often, the ground case or adverse cases are foisted falsely and purposely. The practice of Police Officers registering false cases, especially " attempt to murder cases on Police officials" or strangers to the accused to create a ground case for the purpose of detaining persons under Act 14 of 1982 is deprecated.

19. Since Mr.P.Ravisekaran, the Inspector of Police, J.5, Shastry Nagar Police Station has violated the orders of this Court of "not to file the charge sheet", but filed a charge sheet with ante date in connivance with the court staff of the concerned Metropolitan Magistrate Court, he has committed offence of contempt of court and the Registry is directed to issue notice to the said Inspector of Police, for contempt.

20. In the result, the Investigation of Cr.No.136 of 2003 of J-5, Shastri Nagar Police Station, Cr.No.138 of 2003 and Cr.No.451 of 2003 of J-6, Thiruvanmiyur Police Station and Cr.No.277 of 2003 of R-4, Pondy Bazaar Police Station are transferred to the file of the Central Bureau of Investigation, Special Crime Branch, Chennai for further investigation and filing a final report.

Consequently, connected Crl.M.Ps are closed.

Index:yes
Internet: Yes

gkv

Copy to:
1. Inspector of Police

J5 Sastry Nagar Police Station
Chennai City.
(Cr.No:136/03)

2. Inspector of Police
J-6 Thiruvanmiyur Police Station
Chennai City.
(Cr.NO.138/03) &
(Cr.No:451/03)

3. Inspector of Police
R-4 Pondy Bazaar Police Station
Chennai City.
(Cr.No:277/03)

4. The Public Prosecutor
High Court, Chennai-104

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/04/2004

Coram

The Honourable Mr. Jutice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. KARPAGAVINAYAGAM

W.P. No.10860 OF 2001

P.S. Balasubramaniam ... Petitioner

-Vs-

1. The Government of Tamil Nadu
rep. by its Secretary to Government
Finance (Pay Cell) Department
Chennai 600 009

2. The Accountant General of Tamil Nadu
Teynampet
Chennai 600 018

3. The Pension Pay Officer
Chennai 600 006 ... Respondents

Petition under Art.226 of the Constitution, praying for a

Writ of Certiorarified Mandamus as stated in the petition

For Petitioner :: In person

For Respondents :: Mr. S.T.S. Murthy, Spl.G.P.
Asst. by Mr. Muralidharan
Mr. T. Ravikumar for R2

ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

In the present writ petition, the petitioner, who retired as a Deputy Registrar of this High Court, seeks increased pension. Shortly stated, the case of the petitioner is that he retired on 31-3-1996 and till that time, there was no implementation of the recommendations of the VI State Pay Commission. He was drawing the basic pay of Rs.4,2 00 and a special pay of Rs.150/- in the pre-revised scale of pay of Rs.3700-5300. On his retirement, his basic pension was fixed at Rs.2,403/- per month with effect from 1-4-1996.
1.1. There was, in the meantime, Fifth Pay Commission at the instance of the Government of India and ultimately, the Government of India also accepted the recommendations of the said Pay Commission with regard to the employees of the Central Government. The State Government, on its part, constituted a Financial Committee to examine the question of revision of pay and allowances of the State Government employees and teachers based on the recommendations of the V Central Pay Commission. This Committee submitted its report on 16-3-1998 and based on its recommendations, a Government Order, G.O. Ms. No.162 Finance (Pay Cell) dated 13-4-1998 came to be issued. According to this Government Order, the pay of the employees of the State Government was directed to be fixed in the new scales of pay with effect from 1-1-1996. In pursuance of that, the petitioner□s salary was fixed at Rs.12,37 5/-, which was about Rs.8,025/- more than his last pay drawn. There is no dispute that the arrears of pay have been received by him as per the formula laid down by the State Government for the three months that he served after 1-1-1996.
1.2. The State Government thereafter passed a Government Order, G.O. No.174 dated 21-4-1998 for re-fixing the pension payable to the retired Government employees. Under this, some principles were laid down for revising the pension, viz.
(a)Basic Pension (Pension before commutation) including personal pension;
(b)related dearness allowance as on 1-1-1996;
(c)the first instalment of Interim Relief of Rs.50/-;
(d)the second instalment of Interim Relief of 10% of the pension; and
(e)40% increase in basic pension.
Under this Government Order, even the persons who had retired earlier to 31-10-1995 were to get the revised pension. Petitioner□s case is that a person, who retired on or before 31-12-1995 and drawing a basic pension of Rs.2,403/- would get the revised pension of Rs.6,324/-. There was, however, a different principle adopted in respect of those persons who had retired from service in between 1-1-1996 and 30 -6-1996. It was mentioned in paragraph 7 of the said Government Order that the pension was to be fixed at fifty per cent of the average of the last ten months□ pay drawn by that person. The

petitioner feels aggrieved by this, as, according to him, that amount is lesser than the amount of pension payable to those person who had retired on or before 31-12-1995. In respect of the employees, who were to retire after 1-7-1996, they were to get the pension at the rate of fifty per cent of the last pay drawn by them. However, in case of the petitioner, the formula applied was the fifty per cent of the average of last ten months pay. The petitioner submits that this is discriminatory.

1.3. Because of the complaint made, the Government came out with another Government Order, viz. G.O. No.200 dated 18-5-1999 whereby, some further changes came to be made. Under that Government Order, a further respite was given to the persons like the petitioner, who had retired between 1-1-1996 and 30-6-1996. The relevant paragraph reads as follows:

In respect of those retired from service between 1-1-1996 to 30-6-19 96 whose pension was calculated based on 10 months average pay, if the pension fixed in the revised scale of pay is less than 50% of the minimum of the revised time scale of pay granted with effect from 1-1-1996 applicable to the post last held by the employees concerned at the time of retirement, the pension shall be raised to the level of 50 % of the minimum of that time scale.

It may not be out of place to state that by G.O. Ms. No.200, the Government had agreed to pay fifty per cent of the minimum of revised time scale of pay introduced with effect from 1-1-1996 to those employees who had retired from services prior to 1-1-1996. Perhaps, it is only on that ground that same benefit was given to the persons who had retired between 1-1-1996 and 30-6-1996 by equating them in case their pension calculated by the earlier method was lesser than fifty per cent of the minimum revised time scale of pay. Petitioner, however, pleads that this becomes discriminatory though his pension was ultimately raised to Rs.6,000/- since the post he held when he retired carried the scale of pay of Rs.12,000-16500. The advantage of the pension was given to him in terms of G.O. No.200, referred to earlier. Needless to mention that these pension benefits are to be granted not with effect from 1-1-1996 but with effect from 1-4-1999.

1.4. Petitioner is aggrieved on both counts. According to him, the pension benefits should have been given with effect from 1-1-1996 and not with effect from 1-4-1999. Secondly, he says that his pension should be at least on par with the employees drawing the pension of Rs.2,403/- before 31-12-1995. Petitioner has shown us a table which suggests that a person who drew the pension of Rs.2,403/- on or before 31-12-1995 would draw the pension of Rs.6,324/-. He suggests that in his being granted the pension of Rs.6,000/-, he is being put to a loss in the sense that, a person who has retired earlier on the same pension would be getting the better benefit and the better pension than the petitioner, who has in fact retired three months after that person. This, in short, is the case of the petitioner.

2. Now few undisputed facts. The petitioner's pension was fixed at Rs.5,230/- on the basis of his ten months average pay. By the application of G.O. No.199, his pension was increased to Rs.5,985/- with effect from 1-4-1996. Ultimately, giving him the advantage of G.O. No.200, his pension was increased to Rs.6,000/- with effect from 1-4-1999. It is on this background that we have to test as to whether the petitioner can claim any discrimination against him in fixation of pension.

3. We shall first take up the point of applicability of the date from which the petitioner is directed to be paid his arrears of pension. For that, the Government has pleaded in the counter that there was a financial crunch in the State and the financial liability on account of payment of pension was the highest in case of State of Tamil Nadu. The Government has pleaded that it is by way of policy that a cut-off date was fixed, i.e. 1-4-1999. In a case of similar nature (W.P. No.400 of 2000, decided on 7-4-2004), we have approved of that policy also. There can be no doubt that the Government by way of policy could fix a date as cut-off date for bestowing the benefits of the revised pension. In the said judgment, we have already held that there was nothing wrong in the policy framed by the Government to bestow the revised pensionary benefits with effect from a particular date. We also did not find it discriminatory at all. It was after all a question of bestowing the pensionary benefits. The Government was not taking away or reducing the benefits. It was only a question of bestowing the benefits on the living pensioners with effect from a particular date. We found the Government policy also to be sound, non-discriminatory and as such we agreed in that petition that the policy could not be assailed on the ground that it was discriminatory. We adopt the same reasoning here also. Therefore, the first contention that the fixation of the date for grant of benefits of the revised pension with effect from 1-4-1999 and not with effect from 1-1-1996 is discriminatory is rejected. This takes us to the second contention raised by the petitioner.

4. The petitioner pleads that persons who retired on or before 31-1 2-1995 and drawing the pre-revised pension of Rs.2,403/- would get the revised pension of Rs.6,324/- whereas, he would get the pension of Rs.6,000/- only and that, according to him, is incongruous. We do not agree. After all 1-1-1996 was a cut-off date fixed by the Government and after that date, the recommendations of the V National Pay Commissions were accepted and by way of VI State Pay Commission, the pay-scales of the State Government employees and the living pensioners were revised. Petitioner cannot deny that he got the increased salary with effect from 1-1-1996 as per the State Government□s formula fixed for that purpose. This was, therefore, the advantage the petitioner got under the VI State Pay Commission. He cannot compare his case with those persons who retired from State Government service on or before 31-12-1995 because there will be a clear-cut distinction between the same. Petitioner was an employee who got the benefits of the increased salaries on account of the application of the recommendations of the V National Pay Commission, which was accepted by the VI State Pay Commission. This is apart from the fact that the petitioner□s earlier fixed pension was also increased owing to G.O. No.200. It is not as if the petitioner was singled out alone. All the persons, who were the co-travellers with the petitioner, have been given the same treatment. They got the increased salary with effect from 1-1-1996 . They got the benefits of the increased pension also just as the petitioner got. In fact, the petitioner has not argued before us the constitutionality of G.O. No.200. His sole contention is that had he retired before 31-12-1995, he would have got more pension. However, the petitioner forgets that he would not be able to get more salary which he got after 1-1-1996 till 31-3-1996, the day on which he has retired. He has, in fact, drawn the full benefits of V National Pay Commission as also the VI

State Pay Commission and, therefore, there would be no question of now turning back and complaining that he was paid less when compared to those persons who were retired on or before 31-12-1995. We do not think that that will be a correct thing to do for the petitioner. We, therefore, do not see any merit in the petitioner's claim. The petitioner's pension has undoubtedly been fixed in a correct way in keeping with G.O. No.174, G.O. No.199 and ultimately G.O. No.200. We do not see anything wrong in the calculation. Petitioner's case has no merits. It is dismissed but without any orders as to the costs.

Index:Yes
Website:Yes

Jai

To:

1. The Secretary to Government
Finance (Pay Cell) Department
State of Tamil Nadu
Chennai 600 009

2. The Accountant General of Tamil Nadu
Teynampet
Chennai 600 018

3. The Pension Pay Officer
Chennai 600 006